

BYLAW AMENDMENT/Stormwater Management

ARTICLE NO. 1: To see if the Town will vote to amend the Brewster Town Code, by adding a new Chapter 272 as follows:

Chapter 272

STORMWATER MANAGEMENT BYLAW

§ 272-1. Purpose

The purpose of this Bylaw is to establish minimum stormwater management requirements and procedures in order to minimize damage to public and private property and infrastructure; safeguard the public health, safety, environment and general welfare; protect aquatic resources and wildlife habitat; and conserve groundwater supplies. This Bylaw seeks to meet that purpose through the following objectives:

- A. Establish decision-making processes surrounding land development and redevelopment that protect watershed integrity and preserve and/or restore the health of local water resources, such as Pleasant Bay, tributaries from Namskaket Marsh to Quivett Creek Cape Cod Bay, freshwater ponds, streams, and groundwater that is Brewster's sole source drinking water supply.
- B. Ensure that new development and other land alterations maintain pre-development runoff characteristics in order to maintain aquatic habitats and prevent flooding, channel erosion, sedimentation, water quality degradation, a decrease in stormwater recharge, and property damage.
- C. Improve stormwater management from redevelopment and road repaving in areas of existing development.
- D. Promote the use of Low Impact Development (LID) approaches, such as reducing impervious cover, maintaining natural hydrology, preserving open space, and rainwater reuse.
- E. Establish minimum construction and post-construction stormwater management standards and design criteria to control stormwater runoff quantity and quality.
- F. Ensure that during construction soil erosion and sediment control measures are incorporated into the site design process and are implemented and maintained through the establishment of permanent erosion control measures.
- G. Ensure the long-term function and safety of post-construction stormwater practices.
- H. Establish administrative procedures for: the submission, review, and approval or disapproval of stormwater management plans; the inspection of approved active projects; and post construction follow up.
- I. Ensure compliance with requirements of the National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4) and other applicable State and Federal mandates.

1
2 § 272-2. **Authority**

3 This Bylaw is adopted under authority granted by the Home Rule Amendment of the
4 Massachusetts Constitution, the Home Rule statutes, pursuant to the Regulations of the federal
5 Clean Water Act found at 40 CFR 122.34, and as authorized by the residents of the Town of
6 Brewster at the 2016 Annual Town Meeting and as amended.

7
8 § 272-3. **Definitions**

9 The following terms are defined for the purposes of this Bylaw:

10 ACRONYMS:

11 LID – Low Impact Development
12 MS4 – Municipal Separate Storm Sewer System
13 MSWMS – Massachusetts Stormwater Management Standards
14 NPDES -- National Pollutant Discharge Elimination System
15 SMP – Stormwater Management Permit
16

17 DIRECT DISCHARGE: Any pipe, open channel, or concentrated flow path where stormwater
18 runoff is conveyed directly to a water body without prior stormwater treatment or volume
19 reduction.

20 DISCONNECTION: The redirecting of stormwater runoff away from a drainage system into a
21 pervious area of stormwater management. An example would be putting downspouts into dry
22 wells, or having downspouts drain to a rain garden.
23

24 DISTURBANCE: Any activity that causes a temporary or permanent change in the position or
25 location of soil, vegetation, impervious cover, or other land surface that exposes soils to potential
26 erosion, changes the ability of a ground surface area to absorb water, increases polluted runoff,
27 and/or changes the existing surface drainage patterns.

28 IMPERVIOUS COVER: Any material or structure on or above the ground that prevents water
29 from infiltrating through the underlying soil. Impervious cover includes, without limitation,
30 paved parking lots, roads, sidewalks, driveways, patios, roof tops, and swimming pools. Gravel
31 and dirt surfaced roads and parking areas that have become compacted by vehicles and heavy
32 equipment are considered impervious. Permeable pavers and porous pavements designed to
33 prevent compaction are not considered impervious. The term “impervious cover” shall include
34 “impervious area” and “impervious surface.”

35 INFILTRATION: The act of conveying precipitation or runoff into the ground to permit
36 groundwater recharge and the reduction of surface runoff from a project site.

37 LOW IMPACT DEVELOPMENT (LID): An approach to land development design and
38 stormwater management that attempts to mimic the natural hydrology of the site by avoiding,
39 reducing and mitigating impacts with natural, non-structural and structural measures.

1 MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS (MSWMS): The latest
2 version as may be amended of the Stormwater Management Standards and accompanying
3 Stormwater Handbook issued by the Massachusetts Department of Environmental Protection
4 pursuant to authority under the Wetlands Protection Act, M.G.L. c.131, §40, and the
5 Massachusetts Clean Waters Act, M.G.L. c.21, §§26-53. The Stormwater Management
6 Standards are incorporated in the Wetlands Protection Act Regulations, 310 CMR 10.05(6)(k)
7 and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

8 MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) or MUNICIPAL STORM
9 DRAIN SYSTEM: The system of conveyances designed or used for collecting or conveying
10 stormwater, including, without limitation, any road with a drainage system, street, gutter, curb,
11 inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or
12 altered drainage channel, and other drainage structure that together comprise the storm drainage
13 system owned or operated by the Town of Brewster.

14 NEW DEVELOPMENT: Any construction or land disturbance on a lot, or portion of a lot, or
15 linear right-of-way or easement that is currently in a vegetated state.

16 POST-CONSTRUCTION or POST-DEVELOPMENT: The conditions expected to exist after
17 completion of the proposed development activity in accordance with approved plans on a
18 specific site or tract of land, and does not refer to or include the construction phase of a project.

19 PRE-DEVELOPMENT: The conditions that exist prior to the proposed development. Where
20 phased development or plan approval occurs (e.g., preliminary grading, roads, and utilities, etc.),
21 the existing conditions at the time prior to the first plan submission shall establish pre-
22 development conditions.

23 PROJECT AREA: The portion of a parcel of land being developed or redeveloped.

24 RECHARGE: The replenishment of groundwater reserves.

25 REDEVELOPMENT: Any construction, alteration, improvement, repaving, or resurfacing on a
26 site that contains impervious cover, provided the activity does not increase net impervious cover.
27 Portions of a project that increase impervious cover will be treated as new development.

28 REVIEWING AGENT: Any Town Employee, board or agent delegated in writing by the
29 Planning Board to administer, implement, and enforce the Stormwater Management Bylaw.

30 ROAD IMPROVEMENTS: For the purposes of this bylaw, work on existing roads that trigger
31 stormwater management compliance include resurfacing projects when the sub-base is
32 intersected, the road is being widened, or when the project includes direct drainage to a beach,
33 pond, tributary or wetland. Re-grading of unpaved roads does not trigger compliance with
34 stormwater standards unless the road is being widened, or if it includes a direct discharge to a
35 beach, pond, tributary or wetland.

36 SITE: The entire parcel of land being developed or redeveloped.

1 STORMWATER MANAGEMENT: Using engineered structures and non-structural (e.g., site
2 design, vegetation) measures to reduce runoff volume and rates, remove pollutants, promote
3 infiltration, or minimize sources of pollution.

4 STORMWATER MANAGEMENT PERMIT (SMP): A permit issued by the Planning Board
5 after review of an application, plans, calculations, and other supporting documents.

6 STORMWATER RUNOFF: Rainfall or snowmelt water flowing over the ground surface or
7 other surface (e.g., rooftop).

8 Terms not defined shall be construed according to their customary and usual meaning, unless the
9 context indicates a special or technical meaning. Words used in the present tense include the
10 future; words in the singular number include the plural and words in the plural number include
11 the singular; and the word "shall" is mandatory and not a suggestion-. Additional definitions may
12 be adopted by separate regulation.

13 14 § 272-4. **Administration**

15 A. For residential projects not requiring an SMP, but subject to the requirements of this
16 bylaw, Stormwater measures shall be evaluated as part of the Building Permit
17 process.

18 B. The Planning Board shall be the permit granting authority for this Bylaw. The
19 Planning Board shall not have jurisdiction over stormwater issues within areas where
20 the Conservation Commission has jurisdiction under the Wetlands Protection Act
21 and/or any local regulations.

22 Any powers granted to, or duties imposed upon, the Planning Board may be delegated
23 in writing by the Planning Board to any Town employee, board, commission,
24 committee or agent, hereby known as the "Reviewing Agent."

25 C. The Planning Board or its Reviewing Agent shall take any of the following actions as
26 a result of an application for a Stormwater Management Permit (SMP) as specifically
27 defined within the Stormwater Management Regulations promulgated as a result of
28 this Bylaw: Approval, Approval with Conditions, or Disapproval.

29 D. A decision of the Planning Board or its Reviewing Agent shall be final. Further relief
30 of a decision by the Planning Board or its Reviewing Agent made under this Bylaw
31 shall be appealed to the Superior Court, in accordance with M.G.L. Ch 249 §4.

32 § 272-5. **Regulations**

33 A. The Planning Board may adopt, and periodically amend, Regulations relating to the
34 terms, conditions, definitions, enforcement, fees (including application, inspection,
35 and/or consultant fees), procedures and administration of this Stormwater
36 Management Bylaw by majority vote of the Planning Board, after conducting a
37 minimum of two (2) advertised public hearings to receive comments on any proposed
38 revisions. Should the Planning Board fail to create and disseminate such Regulations
39 or a court of competent jurisdiction invalidates the Regulations by legal declaration,
40 this Bylaw shall not be suspended or invalidated.

- 1 B. The Planning Board will utilize, at a minimum, the policy, criteria, and standards of
2 the most recent version of DEP's Massachusetts Stormwater Management Standards
3 (MSWMS) and the Town's approved MS4 Permit through EPA Region 1 for
4 execution of the provisions of this Bylaw, except where the Town of Brewster
5 specifies more stringent standards.

6
7 **§ 272-6. Applicability**

- 8 A. A SMP shall be obtained for all activities, new development, and redevelopment
9 projects disturbing 2,500 square feet or more of land that alters the quantity or quality
10 of stormwater runoff, except for single and two-family residential projects or exempt
11 activities pursuant to § 272-6.D of this Bylaw.
- 12 B. The following road improvement projects disturbing 2,500 square feet or more of
13 land are required to comply with stormwater regulations:
- 14 (a) Projects where the sub-base is intersected during resurfacing of paved roads;
 - 15 (b) When paved or unpaved roads are being widened; or
 - 16 (c) When the project includes a direct discharge to a beach, pond, tributary or
17 wetland.
- 18 C. A Building Permit or approval from the Building Commissioner documenting
19 stormwater control measures shall be obtained for construction, renovation, or
20 modification of a single or two-family dwelling and associated accessory structures
21 disturbing 2,500 square feet or more of land.
- 22 D. Exemptions
- 23 1. Normal maintenance and improvement of land in agricultural use as defined by
24 the Wetlands Protection Act regulation 310 CMR 10.04 and MGL Chapter 40A
25 Section 3 Zoning Act.
 - 26 2. Emergency repairs to existing utilities. Repairs will be performed as is
27 appropriate to the emergency situation. Following emergency repairs, areas that
28 meet or exceed the 2,500 square foot area of disturbance will be required to obtain
29 a SMP as outlined in this bylaw.
 - 30 3. Emergency repairs to existing roads or their drainage systems, or to any
31 stormwater management facility that poses a threat to public health or safety.
32 Following emergency repairs, areas that meet or exceed the 2,500 square foot area
33 of disturbance will be required to obtain a SMP as outlined in this bylaw.
 - 34 4. Any projects subject to review by the Planning Board and/or the Conservation
35 Commission for which all necessary approvals and permits have been issued
36 before the effective date of this Bylaw and/or applications have been filed with
37 the respective entities within ninety (90) days of the effective date of this Bylaw.
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39 **§ 272-7. Procedures**

40 Permit Procedures and Requirements shall be defined and included as part of any Regulations
41 promulgated under § 272-5272-5 of this Bylaw.

1 § 272-8. **Performance Standards**

- 2 A. The Stormwater Management Standards shall be defined and included as part of any
3 Regulations promulgated under § 272-5 of this Bylaw.
- 4 B. Applicable single or two-family residential activities are not required to obtain a
5 SMP, but will be required to provide erosion and sediment control during
6 construction and to minimize off-site stormwater runoff through disconnection, dry
7 wells, rain gardens, cisterns, pervious pavement, or other residential on-site
8 stormwater measures as part of the process of obtaining a building permit.

9
10 § 272-9. **Waivers**

- 11 A. The Planning Board may in its discretion, and after due consideration, decide to
12 waive and exempt strict compliance with any requirement of this Bylaw or the
13 Regulations promulgated hereunder, where it makes a written finding that such action
14 is:
- 15 1. Allowed by federal, state and local statutes and/or regulations;
16 2. In the public interest; and
17 3. Consistent with the purpose and intent of this Bylaw under § 272-5272-5.
- 18 B. Criteria for granting a waiver shall be defined and included as part of the Regulations
19 promulgated under § 272-5272-5 of this Bylaw.

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21 § 272-10. **Stormwater Management**

22 Under certain circumstances where on-site options for stormwater management are limited, or
23 where off-site options provide better protection, the Planning Board may allow the applicant to
24 implement off-site stormwater management. This may be allowed only where a net public
25 benefit is clearly demonstrated and documented by meeting or exceeding the purpose and intent
26 of this Bylaw.

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28 § 272-11. **Enforcement**

29 Where the Planning Board is the permit issuing authority, the Building Commissioner shall
30 enforce this Bylaw, Regulations, orders, violation notices, and enforcement orders, and may
31 pursue all civil and criminal remedies for such violations. The Conservation Commission shall
32 enforce any permit conditions related to stormwater issued under their authority. Enforcement
33 shall be further defined and included as part of any Regulations promulgated under § 272-5272-5
34 of this Bylaw.

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36 § 272-12. **Severability**

- 37 A. The invalidity, unconstitutionality or illegality of any provision of this Bylaw shall
38 have not any effect upon the validity, constitutionality or legality of any other
39 provision.

1 B. This Bylaw shall not interfere with or annul any other bylaw, rule, regulation or
2 permit when the aforementioned specifically states that it is controlling. However,
3 when any other bylaw, rule, regulation or permit does not specifically state that it is
4 controlling, the Stormwater Management Bylaw, if more stringent, shall govern.

5
6 and to take any action relative thereto.
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8 ***Summary***

- 9 ➤ *This proposed Bylaw was created in order to comply with current requirements of the*
10 *Town's 2003 federal National Pollutant Discharge Elimination System (NPDES)*
11 *Municipal Separate Storm Sewer System (MS4) Stormwater Permit, and to implement key*
12 *recommendations of Brewster's Integrated Water Resource Management Plan*
13 *(IWRMP) for nitrogen reduction in the Pleasant Bay Watershed.*
- 14 ➤ *This Bylaw will help minimize the impact of polluted stormwater runoff on the Town's*
15 *ponds, beaches, wetlands and groundwater resources from new development, as well as*
16 *providing opportunities to fix water quality and flooding problems at existing sites during*
17 *redevelopment and road improvement projects.*
- 18 ➤ *Single and two-family residential projects will not be required to obtain a Stormwater*
19 *Management Permit (SMP) or appear before the Planning Board; however, they may*
20 *have to evaluate options for minimizing stormwater runoff as part of the Building Permit*
21 *process.*
- 22 ➤ *The draft Bylaw requires any multi-family, commercial, or industrial activity,*
23 *development, and redevelopment project town-wide that disturbs 2,500 sq ft or more of*
24 *land to obtain a (SMP).*
- 25 ➤ *Some paved and unpaved road improvement projects may be subject to these*
26 *requirements.*
- 27 ➤ *The Planning Board will be the primary permit granting authority for this bylaw. To*
28 *streamline the review process, the Conservation Commission will be the stormwater*
29 *permit authority for projects within their jurisdiction.*
- 30 ➤ *There will be regulations that will accompany this bylaw that will provide detailed*
31 *information on application processes and requirements. These regulations have been*
32 *reviewed and will be voted by the Planning Board following the vote on this article and a*
33 *public hearing process.*